

**BOARD OF APPEALS CASE NO. 4978**

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**BEFORE THE**

**APPLICANT: Kahoe Associates LLP**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct a  
building within the required rear yard and  
Natural Resource District buffer;  
Underwood Lane, Bel Air**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 11/24/99 & 12/1/99**

**HEARING DATE: January 5, 2000**

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**Record: 11/26/99 & 12/3/99**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant is Kahoe Associates LLP. The Applicant is requesting a variance to Section 267-40(B), Table XIII, of the Harford County Code, to construct a building within the required 35 foot rear yard setback, and a variance to Section 267-41(D)(4), (5) and (6) to allow development in a Natural Resource District buffer.

The subject parcel is owned by H. Alton Thackston and Patricia Thackston. The parcel is located on Underwood Lane, south of Hickory and is identified as part of Parcel No. 613, in Grid 1-A, on Tax Map 41. The parcel contains 1 acre, more or less, all of which is zoned Commercial Industrial.

Mr. Torrence Pierce, a civil engineer employed by Frederick Ward Associates, Inc., appeared and testified that he was retained by Kahoe Associates LLP to create a one acre parcel from the property owned by H. Alton Thackston and Patricia Thackston. Mr. Pierce explained that in order to settle an estate, Parcel No. 613 on Tax Map 41 was sold to Mr. and Mrs. Thackston with an agreement one acre of the parcel would be conveyed back to Kahoe Associates LLP when a public sewer line was available to the parcel. Mr. Pierce said that the Applicant is requesting a variance to disturb 12,202 square feet of the Natural Resource District, and the Applicant is also requesting a variance to the required 35 foot rear yard setback. Mr. Pierce said the Applicant is proposing a 16 foot setback and he indicated he felt the subject parcel was unique due to the existence of the Natural Resource District on the parcel as well as the unusual shape of the parcel which he described as being twice as wide as it is deep.

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Mr. Robert Jones appeared and testified that he is an environmental planner with Frederick Ward Associates, Inc., and indicated that he participated in the preparation of a mitigation plan which is marked as "Attachment No. 13" to the Staff Report. Mr. Jones said that the wetlands located on the parcel consist mainly of a ditch which he described as being man-made and indicated that the wetland was not of a high quality because of prior disturbance.

Both Mr. Pierce and Mr. Jones testified they did not feel that approval of either variance would be substantially detrimental to adjacent properties or materially impair the purpose of the Code.

Mr. Anthony McClune, Manager, Division of Land Use Management, for the Department of Planning and Zoning, appeared and testified that the Staff had requested comments from the Soil Conservation Service, the Maryland Department of the Environment, and the Army Corps of Engineers. Mr. McClune said the subject property fronts on Underwood Lane and there are commercial uses located on the adjacent properties. He said the property line impacted by the reduction in the rear yard setback is abutted by the side yard of Hickory International, Inc. Mr. McClune went on to testify that the Harford Soil Conservation District submitted comments concerning the proposal and stated that adequate sediment and erosion control plans need to be submitted for approval before grading permits can be issued. Storm water management plans need to be approved before sediment control plans can be signed. He indicated that Soil Conservation also indicated that the Maryland Department of the Environment and the Army Corps of Engineers may require wetland mitigation for the area of the disturbed wetlands and they want to be notified about the area of mitigation as to whether or not it will be on or off-site.

Mr. McClune also said that the Maryland Department of the Environment submitted their comments concerning the subject property and stated because the property will impact non-tidal wetlands in the 25-foot buffer, authorization will be required from the Maryland Department of the Environment. Mr. McClune said that the Staff felt that the wetlands on the property were marginally functional and that the Natural Resource District had previously been disturbed.

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Mr. McClune said that the Staff found the subject property to be unique due to the existence of the Natural Resource District, as well as the shape of the parcel and he said that the variance to disturb the wetland and reduce the setback will not have an adverse impact on adjoining properties because the adjoining properties are improved by commercial uses.

### **CONCLUSION:**

The Applicants are requesting a variance to Section 267-40(B), Table XIII, to construct a building within the required 35 foot rear yard setback, and a variance to Section 267-41(D)(4), (5) and (6) of the Harford County Code, to allow development in a Natural Resource District buffer.

Section 267-40(B), Table XIII, requires a 35 foot rear yard setback and the Applicant is proposing a 16 foot setback. The uncontradicted evidence was that the subject parcel is unique because of its shape and the existence of the Natural Resource District on the parcel. The evidence also indicated that approval of the variance would not be substantially detrimental to adjacent properties or materially impair the purpose of the Code since all of the existing adjoining uses are commercial.

Therefore, it is the recommendation of the Hearing Examiner that the requested variance to the required 35 foot setback be reduced to 16 feet.

The Applicant is also requesting a variance to Section 267-41(D)(4), (5) and (6) of the Harford County Code, which provides:

- (4) Permitted uses. The following land uses shall be permitted, provided that the conditions described herein are met:
  - (a) Agriculture. Agriculture shall be permitted, provided that accepted soil conservation practices of the Soil Conservation Service are implemented along watercourses or a twenty-five-foot-wide grass filter strip along the edge of cropland bordering streams is provided to reduce surface runoff and associated pollutants from entering waterways.

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- (b) Forestry.** Commercial timber operations shall be permitted, provided that a Forest Management Plan (FMP) is approved by the Maryland Forest, Park and Wildlife Service and the Department of Planning and Zoning. Along streams, a buffer of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. The restriction on harvesting within this buffer may be waived, provided that a site-specific Buffer Management Plan is prepared and approved as an amendment to the Forest Management Plan (FMP). The Buffer Management Plan shall address potential water-quality impacts and shall include a minimum undisturbed buffer designed according to site characteristics. Trees within the buffer may also be harvested to remove diseased, insect-damaged or fire-damaged trees in order to salvage the same or reduce potential stream blockage due to fallen timber. Landowners are exempted from the Forest Management Plan (FMP) requirement when timber is harvested for personal use only. Forestry operations within the urban residential districts (R1, R2, R3 or R4) shall be required to meet the conservation requirements under Subsection D(5) below.
- (c) Utilities.** The replacement of existing utilities or installation of new and accessory utilities will be permitted within the Natural Resources District. Following the placement of utilities, the disturbed land area shall be stabilized and reseeded. Wherever technically feasible, a buffer of seventy-five (75) feet from the water's edge shall be provided along watercourses.
- (d) Storm water management.** Where required, Storm water management facilities are permitted within the Natural Resources District, subject to other Harford County Storm water Management Regulations.
- (5) Conservation requirements.** The following conservation measures are required within this district:

  - (a)** All development shall minimize soil disturbance during development and shall reduce soil erosion and sedimentation. When developing site plans, consideration shall be given to maintaining the existing drainage ways within the Natural Resources District.

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- (b) Clearing or removal of natural ground cover and vegetation in preparation for development shall be minimized. Site development shall be clustered or designed in such a manner to preserve large contiguous tracts of woodland. Clearing of woodlands shall not reduce the area coverage of trees below seventy percent (70%). Along streams, a buffer with minimum width of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. Trees within the buffer may be harvested to remove diseased, insect-damaged or fire-damaged trees to salvage the same or reduce potential stream blockage due to fallen timber. Essential access roads may be permitted to traverse the buffer.**
- (c) Sensitive environmental areas, including significant/special natural features, significant wildlife habitats, saturated soils, highly erodible soils and designated scenic areas shall not be disturbed during any development.**
- (d) Any land in excess of twenty-five-percent slope for an area of forty thousand (40,000) square feet or more shall not be cleared of natural ground cover or vegetation in preparation for development, except for necessary roads and utilities. Not more than thirty percent (30%) of any land in excess of fifteen-percent slope and less than twenty-five-percent slope shall be cleared of natural ground cover or vegetation in preparation for development.**
- (e) Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.**

**Section 267-41(D)(6) provides:**

**Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.**

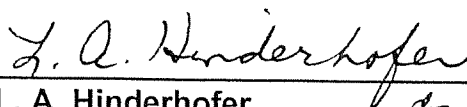
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No evidence was introduced that approval of the requested variances to subsections 267-41(D)(4) and (5) would have an adverse effect on the Natural Resource District. The evidence introduced by the Applicant and corroborated by Mr. McClune of the Department of Planning and Zoning was that the Natural Resource District on the parcel was minimally functional and had been previously disturbed. The necessary comments were obtained from the Zoning Administrator, the Soil Conservation District and the Maryland Department of Natural Resources, all of which are contained within the file.

It is the finding of the Hearing Examiner that approval of the requested variance to disturb the Natural Resource District will not have an adverse impact on the Natural Resource District. It is the recommendation of the Hearing Examiner that the variance to the required 35 foot setback and the variance to disturb the Natural Resource District be approved, subject to the following conditions:

1. The Applicants shall submit detailed site plans, including a final landscaping and mitigation plan to be approved by the Department of Planning and Zoning. The site plan shall be reviewed through the Development Advisory Committee.
2. The landscaping plan shall show shade trees incorporated into parking areas in order to reduce the thermal loadings. Additional trees shall be planted in the wetland and buffer areas adjacent to the site outside of the utility easement.
3. The approval is subject to the Applicant providing either a Bond or Letter of Credit for the landscaping and mitigation requirements. Said Bond or Letter of Credit shall remain with the County for a minimum of two (2) growing seasons, or until the minimum survival rate of 75% is achieved. If a Bond or Letter of Credit is required from MDE or ACOE, this shall satisfy the surety requirements of the County.
4. The Applicant shall comply with the requirements of the Maryland Department of the Environment (MDE) and the United States Army Corps of Engineers (USACOE).

Date FEBRUARY 3, 2000

  
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L. A. Hinderhofer  
Zoning Hearing Examiner